IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.65 OF 2002

Smt.Kamlaben Ramanlal Solanki
& Ors. ..Petitioners.

Vs.

Naigaum Co-operative Housing
Society Ltd. & Ors. ..Respondents.

....

Mr.R.V.Pai with Mr.A.A.Kocharekar for the Petitioners.

Mr.Ajit Karwande for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

29th April, 2005.

P.C. :

At the hearing of the Petition, counsel for the Petitioners and the First Respondent who are the contesting parties have agreed that the following order may be passed with the consent of the parties without recording of any reasons :

i) In pursuance of interim directions issued by this Court on 22nd January, 2002 and 29th January, 2002, the Petitioners have deposited an amount of Rs.85,000/- in this Court which was directed to be invested by the Prothonotary & Senior Master in any nationalized or scheduled bank. The First Respondent would be at liberty to withdraw the aforesaid amount;

ii) By the order that was passed by the Assistant Registrar of Co-operative Societies, F/South Ward on 25th June, 2001, the Petitioners were directed to pay to the First Respondent a total amount of Rs.1,52,978/-. After adjusting the amount of Rs.85,000/- that has been deposited by the Petitioners, the balance which is claimed is rounded off for the sake of convenience by parties at Rs.68,000/-. The First Respondent shall furnish to the Petitioners within a period of six weeks from today bills or receipts and/or in the event the bills and receipts are not available, certificates issued by the

Municipal Corporation reflecting the payment made by the First Respondent towards the balance of the amount of Rs.68,000/- that is claimed by the First Respondent from the Petitioners. The Petitioners have agreed and undertaken before the Court through learned counsel that within a period of two weeks of the furnishing of the aforesaid bills/ receipts or as the case may be, certificates, the Petitioners shall make payment to the First Respondent of such amount that is due and payable thereunder. In addition, the Petitioners shall be liable to pay interest at the rate of 9% per annum which shall be confined to the liability which is to be borne by the Petitioners to the First Respondent from the due date of the respective bills until payment is made;

iii) In so far as the future bills are concerned, the Petitioners shall without prejudice to their rights and contentions in the suit which is pending on the original side of this Court (Suit 1313 of 2004) make payment of the bills which are raised by the First

Respondent in respect of the property taxes, water charges and statutory dues in respect of the premises which are in their occupation. Electricity dues shall be paid to the BEST undertaking directly as and when bills are raised;

iv) In the event that the First Respondent seeks to claim any further charges from the Petitioners, including charges in respect of maintenance bills and sinking fund, it would be open to the First Respondent to take out an appropriate application for interim relief in the suit (Suit 1313 of 2004) which is pending before this Court;

v) It is clarified that the dispute as between the Petitioners and the First Respondent in regard to the question of title shall be dealt with and decided in the suit which has been instituted by the First Respondent in this Court (Suit 1313 of 2004). The observations contained in the impugned order of the Assistant Registrar under Section 101 of the Maharashtra Co-operative Societies

Act, 1960 must be regarded as confined only to the proceedings under Section 101 and shall not be conclusive on the question of title to the property in question;

The obligations which have been assumed by the parties in pursuance of the aforesaid working arrangement shall not come in the way of the adjudication of all the questions which arise in the suit which has been instituted by the First Respondent before this Court. Since no other point has been pressed on either side, the Petition shall stand disposed of.

In view of the above order, Notice of Motion No.571 of 2002 has become infructuous and is accordingly disposed of.